

House Bills 4620 & 4626

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These bills need to be passed. For criminal statutes to be effective, everybody involved—law enforcement, prosecuting attorneys, defense attorneys, judges, and the public at large—needs to understand them. That is not true for the current statute, section 273 of the Michigan Penal Code.

My name is Josh Ard. I am currently an attorney in private practice. I have formerly been the chair of the Elder Law and Disability Rights Section and the Consumer Law Section of the State Bar. I served as Special Advisor to the Governor's Task Force on Elder Abuse. I am currently an adjunct professor at MSU School of Law. Before that I taught at Thomas M. Cooley and Ave Maria law schools. By the way, I am speaking for myself and do not mean to imply that any of these august institutions agree. What probably qualifies me better to testify on these bills is not what I have done as an attorney, but rather what I did in my career before that. I have a Ph.D. in linguistics and taught for several years at the University of Michigan.

Section 273 is extremely confusing. I recall a meeting I had with a high official in the Attorney General's office and a representative of the Office of Service to the Aging. I was trying to convince the deputy attorney general to use 273 in a case of financial exploitation of the elderly. He felt it didn't apply. Later officials have felt differently. My point is not that he was right or wrong, but rather that he was certainly justified in being confused. That statute is very hard to read.

There are empirical tests of readability. They certainly aren't perfect but they are a good place to start. I decided to compare the existing version with the proposed version. The results are striking. The Flesch Kinkaid Grade level test indicated that the average person needed 20.88 years of formal education to understand it. I am overeducated enough to have crossed that threshold, but few people are. The average attorney or judge has had 19 years of formal education (12 of primary, four of college, and three of law school). According to this formula, the majority of attorneys and judges should not be able to understand it. They need two more years of formal education. That is absolutely ridiculous. How can we expect prosecuting attorneys, much less law enforcement officers, to decide when to use such a statute? By comparison, the revised version has a reading level of 9.03. In

other words, it should be comprehensible to the average high school freshman after the few weeks of school. That is much better.

The revision cuts through the clutter and keeps the gist: It is a crime to obtain the signature of a person with the intent to cheat and defraud. Of course, that has been a crime already. It is either theft or attempted theft. The point of this statute is to make it easier to prove the elements. This is what the legislature has done on several occasions, such as in the creation of specific statutes for computer-assisted crimes, illegal use of credit cards and debit cards, and identity theft. Those activities were illegal already; the legislative changes were primarily to help prosecutors prove their cases. While no one can guarantee that an easier to prove statute will reduce the crimes committed by pen, this change is certainly one in the right direction. This is particularly important for senior citizens and vulnerable adults who are especially at risk for these sorts of crimes.

Another minor point is that the revision is applicable in the increasingly digital age we are in where signatures are not necessarily made on paper.

As far as I am aware, this change is not controversial. There is nothing about it that seems more Democratic or Republican. Indeed, it basically makes common sense. I urge your support.

Existing Statute

Fraudulently obtaining signature to note, etc.—Any person who shall, by representing that he is the agent of any person, company, firm or corporation, or by any other means, fraudulently obtain the signature of any person with the intent to cheat and defraud such person, to any promissory note, bill of exchange, due bill, order, contract or any paper writing whatever, shall be guilty of felony, punishable by imprisonment in the state prison not more than 10 years or by fine of not more than 5,000 dollars.

Proposed Statute

A person who fraudulently obtains the signature of any person with the intent to cheat and defraud that person is guilty of a penalty punishable by imprisonment for not more than 10 years or a fine of not more than \$5000.00, or both.